

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRADLEY SHUCK and GREGORY)	
SHUCK,)	
)	
Plaintiffs,)	4:05CV3277
)	
v.)	
)	
CNH AMERICA, LLC,)	MEMORANDUM AND ORDER
a Delaware corporation,)	
)	
Defendant.)	

Plaintiffs have filed a motion to compel discovery, requesting an order requiring defendant to answer interrogatories originally served October 25, 2005. Following the filing of the motion, defendant served its answers and (untimely) objections to the interrogatories. Defendant had previously served plaintiffs' counsel with unsigned answers and objections on February 15, 2006, but did not serve signed and sworn answers until after the motion was filed.

Fed. R. Civ. P. 37(a)(4)(A) mandates, if answers are served after the filing of a motion to compel, that the court require the party necessitating the motion to pay to the moving party its expenses in bringing the motion, unless the responding party's position is found to be substantially justified or other reasons make such an award unjust. The motion did not seek an award of expenses and fees, so the defendant did not have notice of such a claim. Therefore, on the court's own motion, I shall give the parties an opportunity to inform me on that matter so an appropriate award can be made if deemed proper under the rule.

IT THEREFORE HEREBY IS ORDERED:

1. The motion to compel, filing 24, is denied as moot insofar as it seeks signed answers to interrogatories. However, it remains unresolved with respect to the court's duty to award expenses and fees.

2. The plaintiffs shall, within ten days, file an application, properly supported, for expenses and fees incurred in preparing and filing the motion to compel;

3. Defendant is given ten days following the filing of the application in which to file its response.

4. Any award made pursuant to this order shall be made a part of the judgment eventually entered in this case unless, before judgment is entered, the clerk is notified that payment has been made, and is given written verification of the payment and the amount paid.

DATED this 11th day of May, 2006.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge